# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

BARSYL SUPERMARKETS INC. D/B/A FINE FARE SUPERMARKETS

Case No.

29-CA-088768

and

LOCAL 338, RETAIL WHOLESALE & DEPARTMENT STORE UNION, UFCW

#### MOTION FOR DEFAULT JUDGMENT

PLEASE TAKE NOTICE that the undersigned Counsel for the Acting General Counsel, upon the below-listed facts, and the annexed documents and exhibits referred to herein, hereby moves that the National Labor Relations Board, herein called the Board, prior to and without the necessity of a hearing, issue an Order containing findings of fact and conclusions of law in accordance with the allegations of the Complaint in the above-captioned case, and ordering Barsyl Supermarkerts Inc. d/b/a Fine Fare Supermarkets ("Respondent") to appropriately remedy the unfair labor practices found, and granting such other and further and different relief as may be proper in the circumstances.

In support of this Motion, Counsel for the Acting General Counsel shows and alleges that:

- 1. On November 29, 2012, the Regional Director for Region 29 issued a Complaint and Notice of Hearing (Complaint) in the above-captioned case. A copy of the Complaint, Affidavit of Service, and proof of service are attached as Exhibits A, B, and C, respectively.
- 2. Pursuant to Section 102.20 of the Board's Rules and Regulations Series 8, as amended, Respondent's time to file an answer to the Complaint expired on December 13, 2012.
- 3. Respondent failed to file an answer to the Complaint, nor did Respondent make an application for an extension of time to file an Answer.

- 4. On December 18, 2012, Counsel for the Acting General Counsel sent a letter to Respondent, noting that no answer to the Complaint had been filed by Respondent, and further noting that if an Answer was not "received by the close of business on December 26, 2012, the Region [would] seek a Default Judgment from the Board on the allegations in the Complaint." A copy of this letter and proof of service are attached as Exhibits D and E, respectively.
  - 5. To date, Respondent has not filed an Answer to the Complaint.
- 6. Section 102.20 of the Board's Rules and Regulations, provides that if no Answer is filed, "[a]ll allegations in the complaint . . . shall be deemed to be admitted to be true and shall be found by the Board, unless good cause to the contrary is shown."
- 7. The Complaint gave notice to the Respondent that if it did not file a timely Answer that "the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true."
- 8. Based upon the foregoing, and the exhibits herein, the Motion for Default Judgment should be granted.
- 9. As an appropriate remedy for the allegations of the Complaint, it is requested that the Board issue an Order directing Respondent, its officers, agents, successors, and assigns:
- a. Furnish the information requested by the Union within 14 days of entry of a final Board order in this case; and
  - b. Post a Notice to employees in English and Spanish; and
- c. to comply with such other order of the Board as it deems appropriate in the circumstances of this case.

WHEREFORE, Counsel for the Acting General Counsel respectfully moves the Board to grant the relief prayed for herein as follows:

(a) Find pursuant to Section 102.20 of the Board's Rules and Regulations that the allegations

in the Complaint, are true;

(b) Rule upon this Motion prior to the opening of any hearing and prior to the taking of any

evidence: and

(c) Issue an Order, prior to any hearing and without necessity of further proof, against

Respondent herein, its officers, agents, successors and assigns, containing findings of fact and

conclusions of law in accordance with the allegations of the Complaint.

(d) Issue an appropriate Order against Respondent, as set forth in paragraph 9 of this Motion.

Dated at Brooklyn, New York, this 2nd day of January 2013.

Respectfully submitted,

mana & Syce Genaira L. Tyce, Esq.

Counsel for the Acting General Counsel National Labor Relations Board, Region 29

Two MetroTech Center, Suite 5100

Brooklyn, New York 11201

# INDEX

<u>EXHIBIT</u>	DESCRIPTION
A	Complaint and Notice of Hearing in Case No. 29-CA-088768
В	Affidavit of Service for Exhibit A
С	Proof of Service for Exhibit A
D	Counsel for the Acting General Counsel's Letter, Notifying Respondent No Answer Received, dated December 18, 2012
Е	Proof of Service for Exhibit D

# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

BARSYL SUPERMARKETS INC. D/B/A FINE FARE SUPERMARKETS

and

Case 29-CA-088768

LOCAL 338, RETAIL WHOLESALE & DEPARTMENT STORE UNION, UFCW

#### COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by LOCAL 338, RETAIL WHOLESALE & DEPARTMENT STORE UNION, UFCW ("Charging Party" or "Local 338"). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. ("the Act"), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board ("the Board"), and alleges that BARSYL SUPERMARKETS INC. D/B/A FINE FARE SUPERMARKETS ("Respondent" or "Barsyl") has violated the Act as described below:

- 1. The charge in this proceeding was filed by the Charging Party on September 6, 2012, and a copy was served by regular mail on Respondent on September 7, 2012.
- 2. At all material times, Respondent has been a corporation with an office and place of business located at 406 Avenue P, Brooklyn, New York 11223 ("Respondent's facility"), and has been operating a retail grocery store.

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- 3. During the past twelve month period, which period is representative of its annual operations in general, Respondent, in the course and conduct of its business operations described above, derived gross revenues in excess of \$500,000, and purchased and received goods and supplies valued in excess of \$5,000 directly from suppliers located outside the State of New York.
- 4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 5. At all material times, Local 338 has been a labor organization within the meaning of Section 2(5) of the Act.

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- 6. The following employees of Respondent ("the Unit") constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:
  - All of Barsyl's present and future full-time and part-time employees (other than store managers, butchers and meat wrappers) employed in all departments in all of the present and future supermarkets and stores operated by Barsyl.
- 7. At all material times, Respondent has recognized the Union as the exclusive collective bargaining representative of the Unit. This recognition had been embodied in successive collective bargaining agreements, the most recent of which is effective from November 6, 2011 through December 31, 2014.
- 8. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.
- 9. Since about August 16, 2012, the Union has requested in writing that Respondent furnish the Union with the following information: (1) addresses and phone numbers of all Unit employees, and (2) their work schedules and payroll data from November 6, 2011 to the present.

- 10. The information requested by the Union, as described above in paragraph 9 is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.
- 11. Since about August 16, 2012, Respondent has not responded to the Union's request for information described above in paragraph 9.
- 12. Since about August 16, 2012, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 9.
- By the conduct described above in paragraphs 9 through 12, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.
- 14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be <u>received by this</u> <u>office on or before December 13, 2012</u>, <u>or postmarked on or before December 12, 2012</u>. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to <a href="www.nlrb.gov">www.nlrb.gov</a>, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure

because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

Request for an extension of time to file an answer must, pursuant to Section 102.11 (b) of the Board's Rules and Regulations, be filed by the close of business on November 30, 2012. The request should be in writing and addressed to the Regional Director of Region 29.

#### NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on January 9, 2013, at 9:30 a.m. at a hearing room located at 2 MetroTech Center, Suite 5100, Brooklyn, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this

proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: November 29, 2012

JAMES G. PAULSEN REGIONAL DIRECTOR

NATIONAL LABOR RELATIONS BOARD

REGION 29

TWO METRO TECH CENTER STE 5100

BROOKLYN, NY 11201-3838

Attachments

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# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

BARSYL SUPERMARKETS INC. D/B/A FINE FARE SUPERMARKETS

Case 29-CA-088768

and

LOCAL 338, RETAIL WHOLESALE & DEPARTMENT STORE UNION, UFCW

AFFIDAVIT OF SERVICE OF: Corrected Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 30, 2012, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

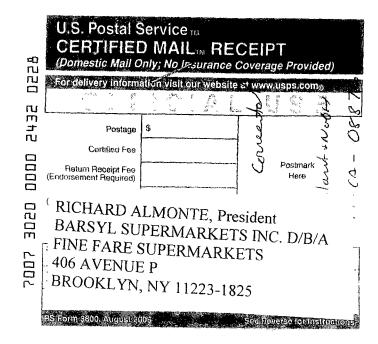
RICHARD ALMONTE, President BARSYL SUPERMARKETS INC. D/B/A FINE FARE SUPERMARKETS 406 AVENUE P BROOKLYN, NY 11223-1825

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

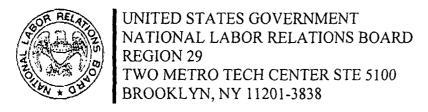
JAE W. CHUN, Attorney FRIEDMAN & WOLF 1500 BROADWAY FL 23 NEW YORK, NY 10036-4052 REGULAR MAIL

LOCAL 338, RETAIL WHOLESALE & DEPARTMENT STORE UNION, UFCW 1505 KELLUM PL MINEOLA, NY 11501-4811

November 30, 2012	Lynda Tofte, Designated Agent of NLRB
Date	Name
	/s/
	Signature



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY				
<ul> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature  X				
1. Article Addressed to:	D. Is delivery address different tom 1?  If YES, enter delivery address below:				
RICHARD ALMONTE, President BARSYL SUPERMARKETS INC. D/B/A FINE FARE SUPERMARKETS					
406 AVENUE P BROOKLYN, NY 11223-1825	1 Dexpress Mall Return Receipt for Merchandise C.O.D.				
	4. Restricted Delivery? (Extra Fee)				
2. Article Number 7007 3020 0000 (Transfer from service many)	2432 0228				
PS Form 3811, February 2004 Domestic Re	turn Receipt 102595-02-M-1540				



Agency Website: <u>www.nlrb.gov</u> Telephone: (718)330-7713

Fax: (718)330-7579

Agent's Direct Dial: (718) 330-2843

December 18, 2012

### BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Richard Almonte, President Barsyl Supermarkets Inc. d/b/a Fine Fare Supermarkets 406 Avenue P Brooklyn, NY 11223-1825

1)

Re: Barsyl S/M Inc. d/b/a Fine Fare Supermarkets

Case No.: 29-CA-088768

Dear Mr. Almonte:

On November 29, 2012, the National Labor Relations Board issued a Complaint and Notice of Hearing against Barsyl Supermarkets Inc. d/b/a Fine Fare Supermarkets in the above-captioned matter. You were served with a copy of the Complaint. This is to remind you that your answer was due on December 13, 2012. As of this date, we have not received an answer to the Complaint. Unless an answer is received by the close of business on December 26, 2012, the Region will seek a Default Judgment from the Board on the allegations in the Complaint.

The hearing in this matter is scheduled for January 9, 2013. If you have any questions, please do not hesitate to call.

Very truly yours,

Genaira L. Tyce

Counsel for the Acting General Counsel

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Brooklyn, NY 11223-1825	3. Service Type Certified Mail Registered Return Receipt for Merchandise C.O.D.				
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PS Form 3811, February 2004